

AMENDED IN ASSEMBLY AUGUST 23, 2011

AMENDED IN SENATE MAY 10, 2011

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 847

Introduced by Senator Correa

February 18, 2011

An act to amend Section 11362.768 of the Health and Safety Code, relating to medical marijuana.

LEGISLATIVE COUNSEL'S DIGEST

SB 847, as amended, Correa. Medical Marijuana Program: zoning restrictions: residential use.

Existing law, the Compassionate Use Act of 1996, an initiative measure, prohibits prosecution, pursuant to provisions of law relating to the possession or cultivation of marijuana, of a patient or a patient's primary caregiver who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

Existing law, the Medical Marijuana Program, requires the State Department of Public Health to establish a voluntary program for the issuance of identification cards to patients and primary caregivers under the Compassionate Use Act and grants immunity from arrest for violation of proscribed provisions relating to the cultivation, possession, transportation, and sale of marijuana, if conditions of the act are met.

The Medical Marijuana Program prohibits a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider from being located within a 600-foot radius of a school.

This bill would, also, prohibit a marijuana cooperative, collective, dispensary, operator, establishment, or provider from being located within a 600-foot radius of a residential zone or residential use unless a local ordinance, which may be more or less restrictive than the standard, is passed by the city council or county board of supervisors specifically regulating the location of these establishments in relation to residential zones or residential use. *The bill would define “city” for these purposes to mean a general law city, a charter city, and a city and county. The bill would declare establishment of proximity standards to be of statewide concern and not a municipal affair.* By changing the definition of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11362.768 of the Health and Safety Code
2 is amended to read:
3 11362.768. (a) This section shall apply to individuals specified
4 in subdivision (b) of Section 11362.765.
5 (b) (1) No medical marijuana cooperative, collective,
6 dispensary, operator, establishment, or provider who possesses,
7 cultivates, or distributes medical marijuana pursuant to this article
8 shall be located within a 600-foot radius of a school.
9 (2) No medical marijuana cooperative, collective, dispensary,
10 operator, establishment, or provider who possesses, cultivates, or
11 distributes medical marijuana pursuant to this article shall be
12 located within a 600-foot radius of a residential zone or residential
13 use unless the city council or county board of supervisors adopts,
14 for its respective jurisdiction, an ordinance specifically regulating
15 the location of those establishments in relation to residential zones
16 or residential use. Notwithstanding subdivision (f), a local
17 ordinance enacted pursuant to this paragraph may be more or less

1 restrictive than the 600-foot radius standard that applies in the
2 absence of a local ordinance.

3 (c) The distance specified in this section shall be the horizontal
4 distance measured in a straight line from the property line of the
5 school, residential zone, or residential use, to the closest property
6 line of the lot on which the medical marijuana cooperative,
7 collective, dispensary, operator, establishment, or provider is to
8 be located without regard to intervening structures.

9 (d) This section shall not apply to a medical marijuana
10 cooperative, collective, dispensary, operator, establishment, or
11 provider that is also a licensed residential medical or elder care
12 facility.

13 (e) This section shall apply only to a medical marijuana
14 cooperative, collective, dispensary, operator, establishment, or
15 provider that is authorized by law to possess, cultivate, or distribute
16 medical marijuana and that has a storefront or mobile retail outlet
17 which ordinarily requires a local business license.

18 (f) Nothing in this section shall prohibit a city, county, or city
19 and county from adopting ordinances or policies that further restrict
20 the location or establishment of a medical marijuana cooperative,
21 collective, dispensary, operator, establishment, or provider.

22 (g) Nothing in this section shall preempt local ordinances,
23 adopted prior to January 1, 2011, that regulate the location or
24 establishment of a medical marijuana cooperative, collective,
25 dispensary, operator, establishment, or provider.

26 (h) For the purposes of this section, “school” means any public
27 or private school providing instruction in kindergarten or grades
28 1 to 12, inclusive, but does not include any private school in which
29 education is primarily conducted in private homes.

30 (i) *For the purposes of this article, “city” means a general law*
31 *city, a charter city, and a city and county.*

32 *SEC. 2. The Legislature finds and declares that establishing*
33 *standards regulating the proximity of medical marijuana*
34 *cooperatives, collectives, dispensaries, operators, establishments,*
35 *or providers is a matter of statewide concern and not a municipal*
36 *affair, as that term is used in Section 5 of Article XI of the*
37 *California Constitution. Therefore, this act shall apply to all cities*
38 *and counties, including, but not limited to, charter cities and*
39 *charter counties.*

1 ~~SEC. 2.~~

2 *SEC. 3.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.

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